

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
WAYCROSS DIVISION

FILED  
U.S. DISTRICT COURT  
2009 JUN 22 AM 11:10

CLERK R. Out  
SO. DIST. OF GA.

UNITED STATES OF AMERICA

vs.

CASE NO.: CR596-5

THOMAS F. JENKINS  
a/k/a "Tom-Tom"

**MAGISTRATE JUDGES REPORT AND RECOMMENDATION**

On November 18, 1996, the Court sentenced Thomas F. Jenkins ("Jenkins") to a period of incarceration subsequent to his conviction for a violation of 21 U.S.C. § 846. On June 23, 2008, the Court entered an "Order Regarding Motion for Sentence Reductions Pursuant to 18 U.S.C. § 3582(c)(2)." On December 8, 2008, Jenkins filed a Notice of Appeal of that Order. Then on December 30, 2008, Jenkins filed a Motion for Reconsideration of the June 23, 2008 Order. Because of the prior filing of the Notice of Appeal, the Motion for Reconsideration was dismissed by Order dated January 8, 2009. By Notice deemed filed on January 27, 2009, Jenkins seeks to appeal the January 8, 2009 Order. The Eleventh Circuit Court of Appeals remanded the case to this Court for a determination as to whether an extension of time is merited under FED. R. APP. P. 4(b)(4).

On May 12, 2009, the undersigned conducted a hearing on this issue. Jennifer Bodafor from this Court's Clerk's office was at the hearing and testified. Jenkins and Unit Manager James Stewart testified telephonically from USP Atlanta. That hearing establishes the following. This Court's Clerk's office served a copy of the January 8, 2009, Order upon Jenkins at FCI Coleman (staff note of January 9, 2009), the address then listed on the docket sheet as the place of Jenkins' confinement. That mailing was

returned to the Clerk's office because Jenkins was no longer incarcerated at FCI Coleman. The Motion for Reconsideration filed by Jenkins stated that he was then confined at USP Atlanta. Accordingly, the Clerk's office served Jenkins with a copy of the January 8, 2009 Order at that address in an envelope postmarked January 21, 2009. However, the Clerk's office failed to make a staff note upon the docket that the original mailing serving the Order was returned or that it was re-served by that January 21, 2009 mailing. As Jenkins' Notice of Appeal was deemed filed on January 27, 2009, it was filed within the ten days after the mailing of the Order to his correct address. Good cause exists, under FED. R. APP. P. 4(b)(4), to extend the time for filing the Notice of Appeal and deem Jenkins' appeal as timely filed.

**SO REPORTED AND RECOMMENDED**, this 22<sup>nd</sup> day of June, 2009.

  
JAMES E. GRAHAM  
UNITED STATES MAGISTRATE JUDGE